

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT GREENEVILLE**

KOVA BRISTOL TENN 1894, LLC,)
A Florida Limited Liability Company,)
)
Plaintiff,)
)
)
v.) **Docket No. 2:19-cv-00084**
)
BRISTOL PRESERVATION, LLC,)
A Tennessee Limited Liability Company,)
)
Defendant.)

AFFIDAVIT OF MITCH WALTERS

Affiant, Mitch Walters, after being duly sworn in accordance with law, swears as follows:

1. I am over 18 years of age and of sound mind and body.
2. The information contained in this Affidavit is based upon my own personal knowledge and is true and accurate.
3. I reside in Sullivan County, Tennessee.
4. I am one of the owners and manager of Bristol Preservation, LLC.
5. Bristol Preservation, LLC owns the real property and improvements located at 6045 Old Jonesboro Road, Bristol, Tennessee 37620, more particularly described in Special Warranty Deed of record in Book 3163, Book 2127, in the Office of the Register of Deeds for Sullivan County, Tennessee, and commonly known as the Country Club of Bristol or the Golf Club of Bristol (“Country Club”).
6. The Country Club is Tennessee’s oldest golf country club.

7. In the fall of 2017, Jim Magnusson and Rick Rainville, representatives of Kova Golf Tenn 1894, LLC (“KOVA”), a newly formed Florida golf management company, contacted me about leasing and possibly purchasing the Country Club.

8. KOVA represented that it had an extensive history of successful golf course management, which I later found out to be untrue.

9. Relying on those representations, Bristol Preservation intended to enter into a lease agreement with KOVA; whereby, KOVA would operate and manage the entire Country Club, excepting the fitness center leased by another entity.

10. Accordingly, KOVA proposed initial terms for a lease agreement, attached as **Exhibit 1**, in which KOVA would lease, operate, and manage the Country Club, pay taxes and rent, maintain insurance, and provide “all architectural, engineering and design plans and specifications and cost estimate” for renovations to the Country Club.

11. In exchange, Bristol Preservation would lease the Country Club to KOVA and perform a scope of work that was mutually agreed upon by both parties.

12. As the relationship progressed, principals from KOVA, including Rick Rainville, Bill Delayo, Tracy Bradbury, and Jim Magnusson, performed multiple inspections of the Country Club. To my knowledge, Anthony Emma, the CEO and managing member of KOVA Companies, only visited the Country Club once, even though I repeatedly requested a discussion at the Country Club to clarify and agree upon the scope of work.

13. Even after these inspections, KOVA continued to represent that it would be able to successfully manage, operate, and improve the Country Club.

14. Relying on these representations, and prior to execution of the Lease, Bristol Preservation worked with Taff & Frye Co., Inc. to test the air quality of the Country Club and

remediate mold- and asbestos- containing materials. The assessment and remediation materials are attached as **Exhibit 2**.

15. Likewise, Bristol Preservation hired Jack Kite Co. to perform an HVAC assessment and repair the defects. These materials are attached as **Exhibit 3**.

16. Bristol Preservation also engaged Abingdon Roofing Co. to replace the roof on the clubhouse at the Country Club. The invoices for this work are attached as **Exhibit 4**.

17. This work was done prior to the execution of the lease agreement in order to keep the project on target as best as possible.

18. By April 10, 2018, when the parties executed the Lease, Bristol Preservation gave KOVA immediate possession of the Country Club with all pre-Lease obligations completed. A true and accurate copy of the Lease is attached as Document 1-1. In fact, Bristol Preservation gave KOVA possession of the Country Club in mid-March, prior to the execution of the Lease, in order to allow KOVA the opportunity to prepare for the upcoming golf season.

19. During this time, Bristol Preservation agreed to abate rent for mid-March and April 2018 to allow KOVA additional cash flow. When KOVA also asked for rent to abate for June 2018, Bristol Preservation agreed but only on the understanding that payment of all rent and property taxes would begin in July 2018.

20. After KOVA took possession of the Country Club, Bristol Preservation engaged multiple contractors to perform the work required by Lease Paragraph 7. See, for example, the invoices, work orders and communications attached as Exhibits 2-4 and **Exhibit 5**.

21. For example, Bristol Preservation offered KOVA two choices for general contractors— J. A. Street & Associates (“JASA”) and Burwil Contractors. KOVA chose to use

JASA for the remodeling projects, and Bristol Preservation engaged JASA to begin work on the Country Club.

22. Bristol Preservation approved several work requests related to the Country Club clubhouse, kitchen, bathrooms, exterior, and roofing.

23. In fact, I stressed to JASA the “sense of urgency” to complete the work “in order for KOVA to receive a certificate of occupancy” and requested that JASA maintain “communication and updates moving [forward].”

24. While KOVA has alleged that Bristol Preservation did not perform the required work, Bristol Preservation has done everything in its power to direct, approve, and pay for the work required by the Lease.

25. Moreover, Bristol Preservation has performed multiple renovations and repairs that were outside of its Lease obligations—e.g., removal of a wall between the bar and lobby; part of the complete demolition of an upstairs clubhouse restroom; removal of kitchen equipment; removal of a wall to the downstairs restaurant; adding ceiling tiles in the lower level of the clubhouse, and adding new toilets in the lower level. These additional renovations and repairs were directed by KOVA, and KOVA agreed to reimburse Bristol Preservation for these expenses. To date, KOVA has not reimbursed Bristol Preservation for these expenses.

26. Even after KOVA began directly communicating with JASA and dictating the scope of the work, Bristol Preservation remained responsive and attempted to work with KOVA. These direct communications between KOVA and JASA were to the exclusion of Bristol Preservation, and KOVA unilaterally requested that JASA complete work outside the scope of Bristol Preservation’s responsibilities. For example, KOVA asked JASA to repair clogged toilets that resulted from a golf event at the Country Club organized and operated by KOVA.

27. At some point after KOVA excluded Bristol Preservation from its discussions with JASA, KOVA ceased communications with JASA. KOVA has never explained why it ceased communications.

28. To ensure that KOVA had every chance for success in remodeling the Country Club, I also provided Rick Rainville with the names of interior designers. I also asked that he accompany me and my wife (who knows several decorators and designers) for dinner at several golf clubs and restaurants in the Banner Elk, North Carolina area (approximately an hour from Bristol, Tennessee). Despite multiple offers, Mr. Rainville has never followed through on these opportunities.

29. Additionally, I took Mr. Rainville and several other KOVA representatives to the Virginian and The Olde Farm, other upscale golf clubs in the area, to give KOVA ideas of how other area venues are designed and succeeding.

30. In another attempt to complete the redesign of the interior of the clubhouse, Bristol Preservation agreed to speak with a design firm from Nashville. Nonetheless, this firm, or any other interior design firm, never contacted me or any other agent of Bristol Preservation.

31. In December 2018, after failing to meet its December rent and tax obligations, KOVA emailed a design proposal from Burwil Construction. I agreed to proceed with these design proposals if KOVA would first meet its contractual obligations. KOVA refused.

32. In January 2019, I met with Anthony Emma at KOVA's offices in Naples, Florida in an attempt to reach an agreement on the scope of work and the resumption of KOVA's rent payments under the Lease. Again, KOVA refused to perform its Lease obligations.

33. In February 2019, I attempted to arrange another meeting with Mr. Emma in Naples, Florida, but Mr. Emma refused to discuss. In fact, when KOVA represented that it would

meet with Bristol Preservation at the Country Club if Bristol Preservation paid for additional kitchen equipment that Bristol Preservation was not required to pay for under the Lease and an exorbitant water remediation bill, Bristol Preservation satisfied these requests. Nonetheless, KOVA refused to meet to discuss the scope of work.

34. To date, Bristol Preservation has spent over \$200,000 in improving the Country Club.

35. Even though the Lease required KOVA to begin making Fixed Rent, Monthly Percentage Rent, and Food and Beverage Rent shortly after the Lease commenced, KOVA had not made any rent payments by August 2018 (four months after the Lease commencement date).

36. As such, I emailed Rick Rainville and Anthony Emma, the principals for KOVA, and requested an explanation for why rent had not been paid. The August 2018 emails are attached as **Exhibit 6**.

37. Mr. Emma responded and expressed concern over work not being completed in a timely manner.

38. On September 4, 2018, I demanded an explanation for why rent (and taxes) had not been paid through September 2018. The September 2018 emails are attached as **Exhibit 7**.

39. I then followed up with Mr. Rainville via phone, and he stated that the “flag was in the ground” and rent payments would commence.

40. This phone call was confirmed via email on September 6, 2018, in which I memorialized that “KOVA will start the monthly lease payment, the monthly property tax payment and the monthly sales% payment this month (September 2018).”

41. Mr. Rainville confirmed this payment arrangement when he emailed on September 14, 2018, and introduced Ryan Bosco, KOVA's Corporate Controller, who would be able "to discuss electronic process for future lease rent payments for The Golf Club of Bristol."

42. KOVA did not make its first Fixed Rent payment until October 4, 2018, and this payment was \$5,000 for September's Fixed Rent.

43. This amount was deficient by \$1,250—annual rent is \$75,000, payable in monthly installments of \$6,250—and late by nearly three weeks.

44. On October 18, 2018, three days after it was due, KOVA made its full October Fixed Rent payment.

45. On November 13, 2018, KOVA made its full November Fixed Rent payment, as well as a \$3,750 payment for percentage rent.

46. KOVA has made no additional rent payments.

47. In the 17 months KOVA has occupied the Country Club, it has made only one on-time Fixed Rent payment and one percentage rent payment, which is in addition to the fact that KOVA took over three months to reimburse Bristol Preservation for utilities, which KOVA agreed to pay directly.

48. KOVA has never provided any documentation for Tenant's Gross Revenue or Food and Beverage Gross Revenue, making it impossible to determine its percentage rent payment obligations.

49. To date, KOVA is in arrears for Fixed Rent in the amount of \$76,250, excluding its obligations for Monthly Percentage Rent and Food and Beverage Rent.

50. The 2018 property taxes for the Country Club were \$13,230 (Sullivan County; due on February 28, 2019) and \$11,213 (City of Bristol; due on January 7, 2019). The tax notices are attached as **Exhibit 8**.

51. Prior to execution of the Lease, KOVA agreed “to pay a monthly reimbursement, to Bristol Preservation (Lessor), for amortized state and local real estate taxes for the leased property.” The December 20, 2017, Term Sheet is attached as Exhibit 1.

52. On multiple occasions, e.g., in the communications in Exhibits B and C, I demanded that KOVA pay its monthly reimbursement for taxes.

53. After failing to make any tax payments, I reminded KOVA of its obligations on January 7, 2019. This email is attached as **Exhibit 9**.

54. To date, KOVA has failed to pay taxes, as required by the Lease, and Bristol Preservation has had to meet these obligations.

55. Additionally, KOVA has never provided proof of insurance for a commercial general liability policy or a worker’s compensation policy, as required by the Lease.

56. Finally, KOVA has failed to perform its promises that it was a professional and competent golf management company; in fact, the Country Club is the only golf course listed as under KOVA’s management on KOVA’s website. A July 29, 2019, screenshot is attached as **Exhibit 10**.

57. On April 25, 2018, I received a letter from Country Club member Charles Garnett, expressing concern over KOVA’s actions. The letter is attached as **Exhibit 11**.

58. KOVA “arbitrarily” cancelled his membership.

59. Mr. Garnett was distrustful of KOVA’s ability to manage the Country Club, and he was skeptical of the Bristol community’s abiding good will given KOVA’s actions.

60. Moreover, I have been told repeatedly that members are unhappy and that prospective members are wary to join the Country Club. For example, KOVA failed to aerate the greens in a timely manner, causing concern amongst the Country Club members.

61. I have also received invoices from local vendors and contractors showing that KOVA is failing to pay its bills (in addition to the monetary obligations KOVA has failed to Bristol Preservation).¹ Sample invoices and communications are attached as **Exhibit 12**.

62. Since April 2018, I have continually observed KOVA's poor performance. There are no skilled or knowledgeable employees in the Country Club's pro shop, and KOVA rarely has any management level employees at the Country Club. The facility is unclean. The exterior has no landscaping and is plagued by weeds. There is no sign indicating the restaurant is open, which negatively affects the Food and Beverage Percentage Rent Bristol Preservation should receive.

63. In response to Bristol Preservation's attempt to accommodate KOVA and introduce it to the local community so that it would succeed, KOVA has undermined the goodwill the community holds toward Bristol Preservation, its owners Mitch Walters and Roscoe Bowman, and the Country Club.

FURTHER AFFIANT SAITH NOT

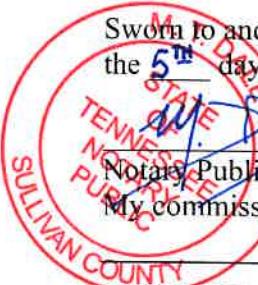


Mitch Walters

Sworn to and subscribed before me this
the 5th day of August, 2019.

Notary Public

My commission expires: 08/29/2022



¹ This pattern of non-payment is further demonstrated by the fact that KOVA rented a home owned by Roscoe Bowman, the other owner of Bristol Preservation, and did not pay him the reasonable rate of \$600 per month. Mr. Bowman, as a gesture of goodwill, agreed to offer the rental to KOVA for half of its market value so KOVA's agents would have a place to stay when travelling from Florida to Bristol, Tennessee.